

No. 818

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

ISSOLA RORICK,

Plaintiff in Error,

vs.

THE RAILWAY OFFICIALS' AND
EMPLOYES' ACCIDENT ASSO-
CIATION (A CORPORATION),

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit
Court for the Southern District
of California.



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Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit in and for the Southern District of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you between Issola Rorick, plaintiff, and the Railway Officials' and Employes' Accident Association, a corporation, defendant, a manifest error hath happened, to the great damage of the said plaintiff, Issola Rorick, as by her complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 14th day of April next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that

error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 17th day of March, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

[Seal] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

The above writ of error is hereby allowed.

OLIN WELLBORN,
Judge.

I hereby certify that a copy of the within writ of error was on the 17th day of March, 1902, lodged in the clerk's office of the said United States Circuit Court for the Southern District of California, for the said defendant in error.

WM. M. VAN DYKE,
Clerk United States Circuit Court, Southern District of California.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. *Issola Rorick*, Plaintiff in Error, vs. *Railway Officials' and Employes' Accident Association* (a Corporation), Defendant in Error. Writ of Error. Filed March 17, 1902. Wm. M. Van Dyke, Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

To the Railway Officials' and Employes' Accident Association, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 14th day of April, A. D. 1902, pursuant to a writ of error on file in the clerk's office of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, in that certain action number 987, wherein Issola Rorick is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and rendered against the said Issola Rorick in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable OLIN WELLBORN United States District Judge for the Southern District of California, and one of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit in and for the Southern District of California, this 17th day of March, A. D. 1902, and of the Independence of the United States, the one hundred and twenty-sixth.

OLIN WELLBORN,

United States District Judge for the Southern District of California.

[Endorsed]: No. 987. In the United States Circuit Court of Appeals for the Ninth Circuit. Issola Rorick, Plaintiff in Error, vs. Railway Officials' and Employes' Accident Association (a Corporation), defendant in Error. Citation. Filed March 25, 1902. Wm. M. Van Dyke, Clerk, By J. J. Owen, Deputy. Service by copy acknowledged this twenty-fourth day of March, 1902. Otis & Gregg, Attorneys for Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Circuit Court, to the United States Circuit Court of Appeals, for the Ninth Circuit, in a certain schedule to this writ annexed, as within we are commanded.

By the Court.

[Seal]

WM. M. VAN DYKE,
Clerk.

In the Circuit Court of the United States, in and for the Ninth Circuit, Southern Division, of the Southern District of California.

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS' AND EMPLOYES' ACCIDENT ASSOCIATION (a Corporation),

Defendant.

Second Amended Complaint.

Comes now the plaintiff above-named, with leave of Court first had and obtained, and files this, her second amended complaint; and for cause of action against defendant complains and alleges:

(I.)

That the said defendant was, and at all the times mentioned herein has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, and doing business in the State of California, and is a corporation resident of the State of Indiana, and a nonresident of the State of California; and then and there engaged in the business of accident and life insurance:

(II.)

That heretofore on, to wit, the 26th day of December, A. D. 1899, David G. Rorick executed and delivered unto

defendant his certain application in writing which defendant has at all times since possessed, wherein and whereby he then requested defendant to issue unto him its certain policy of insurance and pursuant to such application and request the said defendant did on, to wit, the day and year last aforesaid, at San Jacinto in the county of Riverside, State of California, for a valuable consideration by said David G. Rorick then and there paid to it, and in consideration of said application executed and delivered said David G. Rorick its certain policy of insurance, of which said application was made a part, which policy was in the words and figures following:

“No. 169,722.

Principal sum, \$5,000.

Weekly indemnity, \$25.00.

RAILWAY OFFICIALS' AND EMPLOYES' ACCIDENT ASSOCIATION.

Indianapolis, Indiana.

In consideration of his written application, which is hereby made a part hereof, and the agreement to fully perform and abide by all the provisions and conditions of this contract, does hereby insure David G. Rorick, of San Jacinto, Cali., A. T. & S. F. Railway System, by occupation a Passenger Train Conductor, under classification P. B., and agrees to indemnify him, subject to all the terms and conditions herein, against physical bodily injury as hereinafter defined.

The insurance under this policy shall extend only to physical bodily injury resulting in disability or death,

as hereinafter expressed, and which shall be effected while this contract is in force, solely by reason of and through external, violent, and accidental means, within the terms and conditions of this contract, and which shall independently of all other causes immediately, wholly, totally, and continuously from the date of the accident causing the injury disable the insured, and prevent him from doing or performing any work, labor, business or service, or any part thereof, within the conditions of this contract.

No liability by reason of any accident is assumed for more than one of the losses below specified; and payment for any one of such losses shall immediately terminate this policy and all liability hereunder.

ACCIDENTAL INJURIES INSURED AGAINST, SUBJECT TO THE DEFINITIONS AND CONDITIONS BELOW, AND PAYMENTS THEREFOR.

1. Loss of life, occurring within ninety days from the date of the accident causing the fatal injury.
2. Loss of both hands, occurring within ninety days from the date of the accident causing the injury.
3. Loss of both feet, occurring within ninety days from the date of the accident causing the injury.
4. Loss of one hand and one foot, occurring within ninety days from the date of the accident causing the injury.
5. Loss of both eyes (meaning absolute, total, and permanent blindness, and provided the insured possessed the sight of both eyes at the date of the injury), caused

by one accident and within ninety days of the accident causing the injury.

6. Immediate, continuous, and total disability for life, caused by one accident:

7. Loss of either foot or either hand, occurring within ninety days from the date of the accident causing the injury.

8. Loss of one eye (meaning absolute, total and permanent blindness), occurring within ninety days from the date of the accident causing the injury.

9. Loss of time, per week, for a term not exceeding 104 consecutive weeks, when immediately, continuously and wholly disabled.

The payment for loss under provisions 1, 2, 3, 4 and 5, above specified, shall be the full principal sum named herein. The payments for loss under provisions 6 and 7, above specified, shall be one half of the principal sum named herein. The payment for loss under provision 8, above specified, shall be one-fourth of the principal sum named herein. The payment for loss of time, under provision 9, above specified, shall be at the rate of twenty-five dollars per week, not to exceed his average weekly wages, payable as hereinafter provided. Neither the insured nor his beneficiary shall be entitled to indemnity under any of the provisions 1 to 8, inclusive, above specified, for any injury received while the insured is claiming or receiving indemnity under provision 9 of this policy.

Should death result solely from such physical bodily injury, within the conditions of this contract, said association will pay, at its home office, as provided herein,

the principal sum of five thousand dollars, to wife Issola Rorick, if living, otherwise to the legal representatives of the insured.

DEFINITIONS AND CONDITIONS.

(Subject to the following provisions hereof this policy is non-contestable, also non-forfeitable as to any change of occupation.)

This policy shall take effect at 12 o'clock noon (Standard time), on the date hereof, and is issued for the term of twelve months therefrom. It may be renewed from year to year by mutual agreement of said insured and said association. It shall also terminate without notice, according to the terms and conditions of his application, or of any order or obligation at any time given to secure any installment payment or upon failure to pay any installment payment when due.

By loss of hand or hands, or a foot or feet, is meant the actual severance of the hand or hands, foot or feet, above the wrist or ankle. By total disability for life is meant immediate, continuous, total inability to perform any and every kind of labor or work, whereby the insured might obtain a livelihood; and no claim for such disability shall, arise until it shall have immediately and continuously existed for a period of two years from the date of the accident causing such disability. By wholly disabled is meant immediate, continuous, total inability to perform any work, labor, business or service, or any part thereof, from the date of the accident causing the injury.

If any injury resulting in rupture, or hernia shall cause disability or death entitling the insured or his beneficiaries to claim indemnity of this policy; or if any injury entitling insured or his beneficiaries to claim indemnity under this policy be caused or contributed to, by contract with poisonous substances; or by handling or using dynamite or other explosives; or by being engaged in gymnastic or athletic sports; or by exposure to unnecessary danger or perilous venture (except in an effort to save human life), whether the insured did or did not anticipate injury or death to result from such exposure or perilous venture; or by sun stroke or freezing; or by gas or poison in any form or manner; or by anything leaving no external or visible mark of contusion or wound upon the body sufficient to cause death (drowning only excepted), and it shall appear by an autopsy that such injury contributed to the death of the insured, then, in each and every such case, the limit of the association's liability shall be one-fourth of the sum otherwise payable, anything to the contrary herein notwithstanding.

If any injury causing disability or death entitling the insured to claim benefits under the provisions of this policy, be caused or contributed to by quarreling; or by fighting; or by the intentional act of any person other than the insured; or by the act of any person who at the time was insane; or by the sting or bite of a spider, bug, or insect; or by the use of intoxicants or narcotics; or by war or riot; or by any surgical operation of any medical, dental, or mechanical treatment, except by amputation

rendered necessary by an accidental injury and made within ninety days from the date of the event causing the injury; then, in each and every such case, the limit of the association's liability shall be one hundred dollars for fatal injury, or the gross sum of ten dollars for non-fatal injury, anything to the contrary herein notwithstanding.

INCREASE OF HAZARD.

If the injured be fatally or non-fatally injured within the intent and meaning of this policy, while engaged temporarily or otherwise in any occupation or work or risk classified by this association as more hazardous than that under which this policy is issued; or while doing any part of the work of any one so classified; or while exposed to any risk classified by this association as more hazardous than that under which this policy is issued, then, in such case, the association's liability, shall not exceed such an amount as the premiums paid will purchase for such more hazardous occupation, or work or risk, according to the classification of risks and premium rates and limits of this association. The classification of risks of this association is hereby made a part of this contract. If the insured be injured fatally or non-fatally while engaged temporarily or otherwise in any occupation or work or risk not classified by this association, this association's liability shall be rated upon the basis of the most hazardous occupation or work or risk mentioned in the classification of risks of this association; Provided, However, If the insured shall have made an extra payment for extra weekly indemnity, such extra payment

shall be excluded in ascertaining the amount due as benefits under provisions 1 to 8 inclusive, of this policy, if he be killed or sustain any of the losses enumerated in said provisions in a more hazardous occupation or work or risk than that named in this policy.

The death of the insured shall immediately terminate all liability under this policy under provision 9 hereof; and in no case shall the insured be entitled to recover for more than a total of 104 weeks hereunder. Upon the payment of the sum insured under the provisions 1, 2, 3, 4, 5, 6, 7 and 8, hereof, all further liability of the association shall immediately cease, and this policy be thereby terminated.

Injuries intentionally inflicted by the insured; or suicide, whether he be at the time sane or insane; or disappearances; or injuries or death caused or contributed to by disease or infection; or by an over-exertion or by lifting; or injuries received while engaged in, or in consequence of having engaged in, any unlawful act, whether the consequences of so engaging increased the risk or not; or while escaping from or evading any peace officer, are not covered by this policy.

This association reserves the right to terminate this policy at any time by refunding the pro rata amount the insured shall have paid in for the current year; provided that this policy shall not be terminated while the insured is under disability entitling him to indemnity. Upon termination of this policy from any cause, all personal liability of the insured for further premiums shall cease.

Notice of the accident causing the disability or death shall be given in writing, addressed to the association at Indianapolis, Indiana, within fifteen days from the date of the accident, causing the disability or death, stating the name, occupation, and address of the insured, with date and full particulars of the accident causing the disability or death and causes thereof; and failure to give such notice within said time, shall render void all claims under this policy. Also satisfactory, verified, affirmative proof in writing, of the injury and duration of disability, under provision 9, must be furnished by the claimant within one month from the termination of disability, or within one month after the expiration of 104 weeks of such disability, if such disability shall so long continue; and under provision 8 such proof shall be furnished at the end of two years from the date of the accident causing the injury; and under provisions 1, 2, 3, 4, 5, 7 and 8 such proof must be furnished within four months from the happening of the accident causing such injury or death. Proofs herein required shall be upon blanks in use by the association and in accordance therewith, which blanks may be had upon request; failure to furnish such proofs as herein required shall forfeit all claims under this policy. All statements contained in the notice or proofs referred to shall be conclusive against the claimant or beneficiary, as to the matters therein stated, and may be introduced in evidence in any action on this contract. No legal proceedings for recovery hereunder shall be brought within ninety days after the receipt of such proofs at the home office. No suit at law or in equity shall be maintain-

able on this policy unless commenced within six months after the filing of such proofs, and failure to bring suit within such time shall render all claims hereunder null and void, any statutes of limitation to the contrary notwithstanding.

Indemnity.—In case the insured shall suffer an injury resulting in disability entitling him to indemnity under provision 9 of this policy, the insured shall be entitled to indemnity for such length of time only as he shall be under the care and treatment of a physician or surgeon. The indemnity for loss of time hereinunder shall be payable upon receipt at the home office of satisfactory proof of recovery from the injury or upon receipt of satisfactory proof that such disability has immediately and continuously existed for the period of 104 weeks. The indemnity for total disability for life, or for loss of both eyes, shall be payable within thirty days after receipt of satisfactory proof that such disability has continued for a period of two years. All other payments shall be made within ninety days after receipt of satisfactory proof of the accident and loss, as herein specified, at the home office, of the association, in the city of Indianapolis, Indiana. Settlement of any claim not specifically provided for by this policy shall not in any event operate as a precedent. Any payments on account of disability caused by accident which shall result in total continuous disability for life, or loss of both eyes, shall be deducted from the payment for total, continuous disability for life. }

The beneficiary named in this policy has no vested interest herein, but this policy is the sole property of the

insured. The insured may release the association from the result of an injury, and such release shall bar all further rights of the insured and his beneficiary and his legal representatives. The association will change the beneficiary named herein on the written application of the insured and surrender of this policy.

No claim shall accrue or be payable under this policy if any representative or medical adviser of this association be denied the right to examine the person or body of the insured, in respect to any alleged injury or cause of death, when and so often as required, and in case of burial to exhume the body for postmortem examination; nor in any case of any postmortem examination by or on the part of the insured's representatives or beneficiary where the association shall not be given full notice and opportunity to attend and participate.

Any notice required to be given by any statute to the insured or to the beneficiary named herein, or to any other person designated by the insured or beneficiary, which shall be mailed to the last postoffice address of such person appearing upon the books of the association, shall be deemed a sufficient notice; and the affidavit of the secretary or assistant secretary of the association that such notice had been mailed to such person, according to the usual course of business of said corporation, shall be held to be conclusive proof of such notice, and binding upon every person acquiring any interest hereunder.

The limits of travel and residence under this contract are the civilized and inhabited portions of the globe. All the terms and conditions of this contract are conditions precedent.

No person other than the secretary of this association has power to waive any forfeiture, or in any manner change this contract, and such waiver or change must be in writing endorsed thereon.

This policy of insurance is issued pursuant to the laws of the State of Indiana, under which the benefits herein provided are derived from payment by the policy holder. Such payments to be made as required by the association. It cancels any prior policy issued by this association to the insured named herein, unless especially stated in writing.

In testimony whereof, the said Railway Officials' and Employes' Accident Association has hereunto affixed its corporate seal and the signature of its president and secretary at Indianapolis, Indiana, this 22d day of December, one thousand eight hundred and ninety-nine.

[Corporation Seal]

W. K. BELLIS,
Secretary.

CHALMERS BROWN,
President.”

[Endorsed]:

“Form. Sant. R. N: C.—1.

“Non-contestable policy No. 169,722. Railway Officials' and Employes' Accident Association, Indianapolis, Ind. Name—D. G. Rorick, Employed by the S. T. & S. F., Railway System. Date of issue, December 22d, 1899. Principal sum, \$5,000. Weekly indemnity, \$25.

Important notice! In case of change of occupation notify Wm. K. Bellis, Secretary, Lock Box 493, Indianapolis Ind. Read carefully all the conditions of policy.

Wm. G. Meehan, Agent. Read this! In case of injury notice in accordance with the policy must be sent to W. K. Bellis, Sec. and Gen'l. Manager, Lock Box 493, Indianapolis, Ind."

(III.)

That he, the said David G. Rorick, did fully perform all of the obligations on his part to be performed and observed, by the terms, conditions and agreements in said policy contained, and was not at any time in default under any of the conditions of said policy.

(IV.)

That plaintiff was, at the time of the making and delivery of the said policy of insurance, as aforesaid, the wife of the said David G. Rorick, and is, and at all the times herein mentioned was, the beneficiary named therein.

(V.)

That between the 11th day of March, 1900, and the 14th day of March, 1900, while said policy was in full force and effect as aforesaid, the said David G. Rorick received and sustained physical and bodily injury, to wit, traumatic injury of the cranium, at the vortex thereof, which, independent of all other causes, produced and caused his death within ninety days thereafter, to wit, on the 26th day of March, 1900, at the county of San Bernardino, State of California. That the said injury was effected solely by reason of and through external, violent and accidental means, within the terms and conditions of said policy.

(VI.)

That said injury was caused by the said David G. Rorick, while acting as conductor of a passenger train of the Atchison, Topeka & Santa Fe Railway Sysem, raising his head and thereby striking a bolt or other iron in a railway car.

(VII.)

That the injury was at the time supposed to be trivial, and not such as did or would result in either "disability or death."

(VIII.)

That said deceased, notwithstanding said injury, continued thereafter for six days to perform his duties as such conductor. That there was no visible or outward sign of injury resulting from said accident. That he suffered severe pains in the head which increased in violence until his death. That physicians were called on March 21st, 1900, and found him suffering as afore-said and pronounced his disease as that of acute neuralgia.

(IX.)

That on, to wit, the 20th day of March, 1900, the said David G. Rorick did, as a direct and proximate result of said injury, become insane, and he did from that time until his death continue to be insane. That the plaintiff did not at any time know or have any reason to believe that his said insanity was caused by said injury.

(X.)

That neither the said deceased nor the plaintiff knew or believed that his, the said David G. Rorick's, sickness

and suffering were caused by said accident, nor did the attending physicians attribute the same to the injury aforementioned.

(XI.)

That the cause of his death, and that it was the result of said injury, was first discovered by and as the result of an autopsy held by physicians immediately after the death of the insured, and until then it was not known or believed that his sickness, disability, or death was caused by or the result of said injury.

(XII.)

That upon the discovery of the cause of death the plaintiff within four days thereafter notified the defendant of said injury and consequent death in all things as required by the provisions of said policy, by depositing notice thereof in writing in the United States postoffice at Patton, California, duly enclosed in the proper envelope, prepaying the postage thereon, and addressed to W. K. Bellis, Secretary and General Manager, Lock Box 493, Indianapolis, Indiana; and upon request of plaintiff, made on the 30th day of March, 1900, said defendant did furnish the plaintiff all necessary and proper forms or blanks for making proof of the said accident and death of said insured, and within four months after the happening of said accident, to wit, on the 27th day of June, 1900, said plaintiff, as beneficiary under said policy, did prepare and cause to be prepared statements in writing showing due and full proof of the injury and death of said David G. Rorick, in all respects as required by and under the rules and regulations of said defendant corporation, which said statements were made upon and did

fully comply with said forms or blanks so furnished by defendant unto said plaintiff as aforesaid, and did fully present and submit the same to the said defendant corporation at its home office in the city of Indianapolis, in the State of Indiana. That the said defendant corporation did duly receive said notice of the said accident causing said death and the said proofs of death, and ever since and for more than ninety days last past has had, and now has, the same in its possession.

(XIII.)

That at the time and place of filing said proofs of death as aforesaid said plaintiff demanded of said defendant corporation payment of the insurance money, to wit, the sum of five thousand dollars, as provided in and by the terms of said policy, and then and there said defendant did refuse, and for more than ninety days last past refused, and still refuses, to pay plaintiff said sum of five thousand dollars, or any part thereof.

(XIV.)

That the said David G. Rorick (the said insured) and this plaintiff, as such beneficiary under said policy have respectively performed and complied with all the obligations and conditions upon their part to be performed and in said policy contained, and said policy was, and is now, in full force and effect, and an obligation in said amount of five thousand dollars to be paid by the said defendant to this plaintiff.

(XV.)

That the said sum of said insurance money, to wit, the said sum of five thousand dollars, due under said policy

has not, nor has any part thereof been paid, and that the whole of said money is now due and unpaid, and owing from said defendant to this plaintiff.

Wherefore plaintiff prays judgment in her favor and against said defendant corporation in the sum of five thousand dollars, and interest thereon at the rate of seven per cent per annum, according to law from the time of said demand for the same, and for such other and further relief as the nature of the case may require, and for costs of suit.

ALLISON & ANNABELL,
WORKS, LEE & WORKS, and
HUNTER & SUMMERFIELD,
Attorneys for Plaintiff.

State of California, }
County of Los Angeles. } ss.

Issola Rorick, being first duly sworn, deposes and says: That she is the plaintiff in the above-entitled action; that she has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of her own knowledge.

[Seal]

ISSOLA RORICK.

Subscribed and sworn to before me this 18th day of February, 1902.

BENJAMIN S. HUNTER,
Notary Public in and for Los Angeles County, California.

[Endorsed]: No. 987. In the Circuit Court of the United States, in and for the Ninth Circuit, Southern Division of the Southern District of California. Issola

Rorick, Plaintiff, vs. Railway Officials' and Employes' Accident Association, a Corporation, Defendant. Second Amended Complaint. Allison & Annabell, Works, Lee & Works, Hunter & Summerfield, Attorneys for Plaintiff. Filed February 18, 1902. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, in and for the Ninth Circuit, Southern Division of the Southern District of California.

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS' AND EMPLOYES' ACCIDENT ASSOCIATION (a Corporation),

Defendant.

Demurrer to Second Amended Complaint.

Now comes the defendant above-named, in the cause above-entitled, and demurs to plaintiff's second amended complaint herein and for cause of demurrer, alleges:

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

OTIS & GREGG.

Solicitors for Defendant.

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

OTIS & GREGG.

Solicitors for Defendant.

[Endorsed]: No. 987. In the Circuit Court of the United States in and for the Ninth Circuit, Southern Division of the Southern District of California. Issola Rorick, Plaintiff, vs. Railway Officials' and Employes' Accident Association, defendant. Demurrer to Second Amended Complaint. Filed February 26, 1902. Wm. M. Van Dyke, Clerk. Otis & Gregg, Attorneys for Defendant.

At a stated term, to wit, the January term, A. D. 1902, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Monday the tenth day of March, in the year of our Lord, one thousand nine hundred and two. Present: The Honorable OLIN WELLBORN, District Judge.

ISSOLA RORICK,	} Plaintiff,	} No. 987.
vs.		
RAILWAY OFFICIALS' AND EMPLOYES' ACCIDENT ASSOCIATION (a Corporation),	} Defendant.	}

Order Sustaining Demurrer to Second Amended Complaint.

This cause coming on this day to be heard on defendant's demurrer to plaintiff's second amended complaint, J. D. Works, Esq., appearing as counsel for plaintiff and

F. W. Gregg, Esq., appearing as counsel for defendant, and said demurrer having been argued in support thereof by F. W. Gregg, Esq., of counsel as aforesaid for defendant, and in opposition thereto by J. D. Works, Esq., of counsel as aforesaid for plaintiff, and Court thereupon, at the hour of 12:15 o'clock P. M., having taken a recess until the hour of 2:10 o'clock P. M. of this day, and now at the hour of 2:10 o'clock P. M., Court having reconvened, and counsel being present as before, and said demurrer having been further argued in opposition thereto by J. D. Works, Esq., of counsel as aforesaid for plaintiff, and having been further argued in support thereof in reply by F. W. Gregg, Esq., of counsel as aforesaid for defendant, and having been submitted to the Court for its consideration and decision, it is now by the Court ordered that said demurrer be, and the same hereby is, sustained, and that the said action be dismissed; to which ruling of the Court plaintiff, by her counsel, notes and is allowed an exception, which is duly noted.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court March 10th, 1902, in the cause entitled *Issola Rorick, Plaintiff, vs. Railway Officials' and Employes' Accident Association, a Corporation, Defendant.* No. 987, Southern Division, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 10th day of March, A. D. 1902.

[Seal]

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 987. United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. *Issola Rorick vs. Railway Officials' and Employes' Accident Association, a Corporation.* Certified Copy. Order Sustaining Demurrer to Second Amended Complaint. Filed March 10, 1902. Wm. V. Van Dyke, Clerk.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,
Southern District of California, Southern Division.*

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS' AND EM-
PLOYES' ACCIDENT ASSOCIA-
TION (a Corporation),

Defendant.

No. 987.

Judgment.

The demurrer of defendant to plaintiff's second amended complaint having on this the 10th day of March, 1902, being a day in the January term, A. D. 1902, of said Circuit Court of the United States for the Southern District of California, been sustained by the Court, and the Court, having ordered that the said action be dismissed.

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that said plaintiff, Issola Rorick take nothing by this action

as against said Railway Officials and Employes' Accident Association, a corporation, defendant, and that said defendant Railway Officials' and Employes' Accident Association, a corporation, go hereof without day, and that said defendant Railway Officials' and Employes' Accident Association, a corporation have and recover of and from said plaintiff Issola Rorick, its said defendant's costs in this behalf, taxed at \$ —————

Judgment entered March 10th, 1902.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 987. United States Circuit Court, Ninth Circuit, Southern District of California. Southern Division. Issola Rorick vs. Railway Officials' and Employes' Accident Association, a Corporation. Copy Judgment. Filed March 10, 1902. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California, Southern Division.*

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS' AND EMPLOYES' ACCIDENT ASSOCIATION (a Corporation),

Defendant.

No. 987.

Conclusions of the Court on Demurrer.

The amended complaint, in my opinion, does not show compliance with the requirement of the policy as to notice, nor any lawful excuse for the failure.

The pertinent clauses of the policy are as follows:

“Notice of the accident causing disability or death shall be given in writing, addressed to the association at Indianapolis, Indiana, within fifteen days from the date of the accident causing the disability or death, stating the name, occupation, and address of the insured, with date and full particulars of the accident causing the disability or death and causes thereof; and failure to give such notice within said time shall render void all claims under this policy.

* * * * *

“All the terms and conditions of this contract are conditions precedent.”

The notice agreed upon, it will be observed, is a notice of the accident, and the time allowed for giving it, “within fifteen days” runs from the date of the accident. These provisions, unlike corresponding provisions of the policies sued on in some of the cases cited by plaintiff; are neither obscure nor ambiguous, but clear and imperative. Nor does the notice belong to that class, which courts decline to enforce, because of unreasonableness, such as notices of disability or death, where the contingency happens after the limitation has expired. In a case such as those last mentioned it may well be held that notice within the time specified, being impossible, was not contemplated by the parties to the contract.

The alleged insanity of the insured, whatever might have been its effect as an excuse for his failure to give the prescribed notice had he survived and himself sued to recover damages resulting from his own disability, is

not available in the present action for the purpose indicated, for the reason, that the plaintiff herself should have given the notice.

The demurrer will be sustained. I do not know that the plaintiff desires further opportunity to amend, but leave to do so within ten days will be granted.

OLIN WELLBORN,

Judge.

[Endorsed]: No. 987. United States Circuit Court, Southern District of California. *Issola Rorick vs. Railway Officials' and Employes' Accident Association, a Corporation.* Conclusions of the Court on Demurrer. Filed January 20, 1902. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California, Southern Division.*

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS' AND EMPLOYES' ACCIDENT ASSOCIATION (a Corporation),

Defendant.

Petition for Writ of Error.

The above-named plaintiff, Issola Rorick, conceiving herself aggrieved by the judgment entered on the 10th day of March, 1902, in the above-entitled cause, hereby

prays the Court for a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, in said cause, and that a transcript of the records and proceedings and papers on which said judgment was made and entered, duly authenticated, may be sent to the said Circuit Court of the United States for the Ninth Circuit.

Los Angeles, Cal., March 17, 1902.

HUNTER & SUMMERFIELD,
WORKS, LEE & WORKS,
Attorneys for Plaintiff.

[Endorsed]: Original. No. 987. Southern Division, United States Circuit Court, Ninth Circuit, Southern District of California. Issola Rorick, vs. Railway Officials' and Employes' Accident Association. Petition for Writ of Error. Filed March 17, 1902. Wm. M. Van Dyke, Clerk. Hunter & Summerfield, Works, Lee & Works, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Plaintiff.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California, Southern Division.*

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS' AND EM-
PLOYES' ACCIDENT ASSOCIA-
TION (a Corporation),

Defendant.

Assignment of Errors.

Now comes the above-named plaintiff in error, Issola Rorick, by Hunter & Summerfield and Works, Lee & Works, her counsel, and says that in the record and proceedings in the above-entitled cause there is manifest error in this to wit:

1. The Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division, erred in sustaining the defendant's demurrer to the second amended complaint.

2. That said Court erred in dismissing the plaintiff's complaint.

3. That said Court erred in rendering judgment in said cause that the plaintiff take nothing by her action, and in favor of the defendant for its costs.

4. That said Court erred in holding and deciding that the notice of the accident, injury and death of the assured mentioned in said complaint was not given in time, and that therefore the plaintiff was not entitled to recover.

Wherefore, the said Issola Rorick prays that the judgment of the said Circuit Court of the United States, Southern District, Southern Division of California, be in all things reversed.

HUNTER & SUMMERFIELD,
WORKS, LEE & WORKS,

Counsel for Plaintiff in Error.

[Endorsed]: Original. No. 987. Southern Division, United States Circuit Court, Ninth Circuit, Southern District of California. Issola Rorick, vs. Railway Officials' and Employes' Accident Association. Assignment of Errors. Filed March 17, 1902. Wm. M. Van Dyke, Clerk. Hunter & Summerfield, Works, Lee & Works, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Plaintiff.

At a stated term, to wit, the January term, A. D. 1902, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Monday, the seventeenth day of March, in the year of our Lord one thousand nine hundred and two. Present: The Honorable OLIN WELLBORN, District Judge.

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS AND EMPLOYEES' ACCIDENT ASSOCIATION (a Corporation),

Defendant.

No. 987.

Order Allowing Writ of Error and Fixing Amount of Bond.

On reading and filing the petition of plaintiff, Issola Rorick, praying for the allowance of a writ of error in the above-entitled cause, returnable before the United States Circuit Court of Appeals for the Ninth Circuit, and on motion of Benj. G. Hunter, Esq., of counsel for said plaintiff, it is ordered that said petition be, and the same hereby is allowed and granted, returnable before the United States Circuit Court of Appeals for the Ninth Circuit, on the 14th day of April, 1902, and that a transcript of the record and proceedings and papers on which said judgment was made and entered, duly authenticated, be

sent to the said United States Circuit Court of Appeals for the Ninth Circuit; it is further ordered that the amount of the bond on appeal to be given by the plaintiff in error be, and the same hereby is, fixed at three hundred (300) dollars, and that the bond in that amount tendered by said plaintiff in error be, and the same hereby is, approved.



*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California, Southern Division.*

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS AND EM-
PLOYES' ACCIDENT ASSOCIA-
TION (a Corporation),

Defendant.

Bond.

Know all men by these presents, that we, Issola Rorick, of the county of Los Angeles, State of California, and The American Bonding and Trust Company of Baltimore City, are held and firmly bound unto the above-named Railway Officials and Employes' Accident Association, a corporation, in the sum of three hundred dollars (\$300.00), to be paid to it, for the payment of which, well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. sealed with our seals and dated the 14th day of March, 1902.

Whereas, the above-named Issola Rorick has prosecuted her writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment by the Judge of the Circuit Court of the United States of the Ninth Circuit, Southern District of California, Southern Division:

Now, therefore, the condition of this obligation is such that if the above-named Issola Rorick shall prosecute said writ of error to effect, and answer all damages and costs, if she fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE AMERICAN BONDING AND TRUST
COMPANY OF BALTIMORE CITY,

[Seal]

By W. T. CRAIG,
Vice-President.

Attest: WM. DIETERLE,
Assistant Secretary.

Approved.

OLIN WELLBORN
Judge.

[Endorsed]: No. 987. Southern Division, United States Circuit Court, Ninth Circuit, Southern District of California. Issola Rorick vs. Railway Officials and Employees' Accident Association. Bond on Appeal. Filed March 17, 1902. Wm. M. Van Dyke, Clerk. Hunter & Summerfield, Works, Lee & Works, Rooms 420 to 425 Henne Building, Los Angeles Cal., Solicitors for Plaintiff.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

ISSOLA RORICK,

Plaintiff,

vs.

RAILWAY OFFICIALS AND EMPLOYES' ACCIDENT ASSOCIATION (a Corporation),

Defendant.

No. 987.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing twenty-nine (29) typewritten pages, numbered from 1 to 29, inclusive, and comprised in one (1) volume, to be a full, true, and correct copy of the record, pleadings, opinion of the Court, assignment of errors and of all proceedings and papers on which the judgment was made and entered in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

I do further certify that the cost of the foregoing record is \$15.30, and that the amount thereof has been paid me by Issola Rorick, the plaintiff in error in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 29th day of March, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Endorsed]: No. 818. In the United States Circuit Court of Appeals for the Ninth Circuit. *Issola Rorick*, Plaintiff in Error, vs. *The Railway Officials' and Employes' Accident Association (a Corporation)*, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the Southern District of California.

Filed April 2, 1902.

F. D. MONCKTON,

Clerk.